

REMARKS

The typographical error at page 9, line 10 has been corrected such that the proper drawing is now referenced.

The claims have been renumbered to correct for the fact that original claims contained two claims numbered "23". Thus, for purposes of this response and from this point forward, original claims 23-51 are now properly numbered 24-52 and all references to claims numbers shall be taken to refer to the amended number rather than the original number unless clearly indicated.

Claims 10, 15 and 33 are canceled.

The Examiner has required election of a single disclosed species. On page 3, section 2 of the office action, the Examiner sets forth the species as:

Species A (Fig. 2): Claims 1-14, 16-19, 24-43 and 48-52

Species B (Fig. 5): Claims 20-23 and 44-47

Species C (Fig. 8): Claim 15

Applicant affirms the prior election of Species A: claims 1-14, 16-19, 24-42 and 47-51.

However, on the office action summary sheet, the Examiner states that claims 51 and 52 (original 50 and 51) are also withdrawn from consideration. Claims 51 and 52 relate to the embodiment shown in Figure 5, but depend from claim 48, which has been indicated as allowed by the Examiner. Therefore, it is submitted that claim 48 would be generic and claims 51 and 52 allowable under 37 CFR 1.141.

It is respectfully submitted that the application of Doyle '891 as a Section 102 anticipatory reference is not proper in view of the amendment to claims 1 and 26, wherein language requiring the helmet to be composed of a rigid material has been added. Doyle '891 sets forth a distraction device having "an upper strap assembly 28 (e.g., a pair of Velcro straps) ... to secure the upper support 14 to the dental patient 2, typically by passing the upper strap assembly 28 about the head of the dental patient 2." Doyle '891 does not teach the upper strap assembly 28 to be rigid, and cannot therefore anticipate claims 1 and 26 as amended, since every element set forth in the claim is not expressly or inherently described in the Doyle '891 reference (MPEP 2131; *Verdegaal Bros. v. Union Oil co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

It is respectfully submitted that the application of Mathues '058 as a Section 102 anticipatory reference is not proper in view of the amendment to claims 1 and 26, wherein language has been added requiring the helmet to have adjustment means for altering the configuration of said helmet. The helmet taught in Mathues '058 is formed by placing a snug fitting stockinette cap on the patient's head and applying a layer of plaster of Paris (col. 3, lines 29-38), the head band being set "in a plaster or plastic bandage" (col. 1, lines 9-12). Thus, the helmet of Mathues defines a rigid member upon hardening and is not provided with "adjustment means for altering the configuration of the helmet", and so every element set forth in the claim is not expressly or inherently described in the Mathues '058 reference (MPEP 2131; *Verdegaal Bros. v. Union Oil co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

The Examiner bases the Section 103 rejections on the combination of the teachings of Schwenn et al. '494 and Papay et al. '019 with the Mathues '058 and Doyle '891 references. It is submitted that combination of the Schwenn et al. '494 and Papay et al. '019 patents with the Mathues '058 and Doyle '891 patents is not proper. The Schwenn et al. '494 and Papay et al. '019 devices are cranial remodeling helmets. Such devices work by applying controlled compressive forces to the patient's cranium such that the cranium gradually reconfigures into a desired shape. Neither of these devices is a "helmet for applying distractive/distracting forces to the wearer's head" (sections 12-15 of the office action). To the contrary, they apply compressive forces, and the entire purpose of the helmets is to reshape the cranium, not to provide a means to secure distraction means to the wearer's head in a fixed manner where the helmet "distributes compressive forces such that localized pressure points are avoided", as required by the claims. The cranium reshaping is accomplished only by applying localized pressure over a desired region. Attention is drawn to the disclosure of Papay et al. '019, for example, where the bladders 20 are stated as being used to apply pressure (col. 3, line 64 to col. 4, line 5). The bladders 20 are not used "to ensure proper fit of the helmet" as stated by the Examiner (section 15 of the office action), but instead to apply a force to the cranium to correct an abnormality.

Thus, the combination of the Schwenn et al. '494 and Papay et al. '019 references with the Mathues '058 and Doyle '891 references would not make obvious, suggest or motivate one to produce a device as claimed in the application at hand, since the combination would in fact be a negative teaching in the sense that the combination device would be one where the helmet is utilized to reshape the skull in addition to any distraction provided by the Mathues '058 and Doyle '891 references. There is no teaching, suggestion or motivation in Schwenn et al. '494 and Papay et al. '019 to produce a rigid and comfortable fixation helmet for the distraction

members. Thus, on the basis of the above arguments, it is submitted that no combination of known references makes obvious the invention as claimed in the amended claims, under the applicable standards (MPEP 2141). The Schwenn et al. '494 and Papay et al. '019 references are not analogous art and are therefore not properly subject to combination, since the opposing purpose of these devices is such that they are not reasonably pertinent to the problem being solved by the invention (MPEP 2141.01(a) and cases cited therein). The invention as claimed and the cited prior art must be considered "as a whole", and thus the cited art leads away from the invention, not towards it (MPEP 2141.02 and cases cited therein).

The Examiner having stated that claims 16-19 and 38-41 are allowable if properly rewritten, Applicant has amended claims 16 and 38 to include all the limitations of the base claims 1 and 26, respectively. Thus, claims 16 and 38 are now allowable independent claims, and dependent claims 17-19 and 39-41 are allowable.

Claims 48-50 were previously indicated as allowed by the Examiner. As claims 51 and 52 depend from claims 48 and 49 respectively, it is submitted that claims 51 and 52 are also allowable under 37 CFR 1.141.

Claims 1 and 26 having been amended to incorporate language that obviates the rejections set forth in the office action, as argued above, it is submitted that claims 1-9, 11-15, 24-32 and 34-43 are now allowable.

Furthermore, in that claims 1 and 26 are generic and now allowable, it is submitted that withdrawn claims 20-23 and 44-47 are now allowable under 37 CFR 1.141.

In the event that the Examiner does not find all of the above arguments persuasive, Applicant requests that the Examiner make an affirmative statement as to whether claims 50 and 51 are included in Species A or are considered withdrawn.

It is respectfully submitted that the claims as currently presented are patentable, on the basis of the above remarks, and reconsideration and subsequent passage for allowance is hereby requested.

Respectfully submitted,



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